

...T-Mobile®

T-Mobile USA, Inc.
12920 SE 38th Street, Bellevue, WA 98006

May 24, 2004

**VIA FACSIMILE (202) 693-1304
AND FIRST-CLASS MAIL**

Mr. Joseph DuBray, Jr.
Director, Division of Policy, Planning and Program Development
Office of Federal Contract Compliance Programs
Room C-3325
200 Constitution Avenue, N.W.
Washington, D.C. 20210

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OFFICE OF
FEDERAL CONTRACT
COMPLIANCE PROGRAMS
WASHINGTON, D.C. 20210

Re: *Comments To Proposed Regulations to 41 CFR Part 60-1, Obligation
to Solicit Race and Gender Data for Agency Enforcement Purposes*

Dear Mr. DuBray:

I write on behalf of T-Mobile USA, Inc. in comment to the proposed new regulations regarding data collection obligations for applicants by federal contractors. These proposed regulations are issued in conjunction with the proposal by the signatory agencies to the Uniform Guidelines on Employee Selection Procedures (including the OFCCP) to update the definition of "applicant" for purposes of online tracking. T-Mobile appreciates the fact that the OFCCP, the EEOC and other federal agencies are attempting to provide guidance on the definition of applicant. We believe that the dramatic changes in workplace requirements and employment technology require that the federal regulations be relevant to modern workplace practices. T-Mobile, however, has several reservations to the proposed regulations, which I set forth in the comments below.

By way of background, T-Mobile USA, Inc. is the fifth-largest wireless carrier in the United States, with over 23,000 employees. The internet has had a profound impact on the number of applications received by T-Mobile. Since implementing an online applicant tracking system, we have received an increase of 303% in the number of resumes received per year. Our recruiting department is leanly staffed, and sifting through this large number of applications to determine which applicants are truly qualified is a large burden.

In an average month, T-Mobile receives over 20,000 resumes, both electronically and via mail and personal submission. In addition to these resumes, it receives, on average, over 3,000 unsolicited "contacts" regarding employment per month, many electronically. On average, only one in twenty applications leads to an accepted job offer. In light of this burden, T-Mobile's chief concern in reviewing the proposed regulations is that there be a precise definition that preserves T-Mobile's right to meet its recruiting needs with the best candidates

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among a cast of thousands, and comply with its recordkeeping obligations in a cost-effective and efficient manner.

T-Mobile is concerned that the proposed rulemaking sets forth different standards for electronic versus paper applications. The proposal to continue to apply the 25-year old standard to paper applications, but apply a new and different standard to online applications, increases the burden and confusion for T-Mobile's recruiting team. Our recruiting team would be forced to implement two data-tracking systems: one for electronic applications, and another more burdensome one for all other applications / resumes / letters of interest.

Moreover, the regulations' continuing to apply the original 1979 definition of applicant to paper applicants -- which includes no requirement of minimum qualifications -- is also undesirable because it requires T-Mobile to collect information on persons who are grossly unqualified for the jobs they seek, only if they apply on paper. By failing to update this 25-year-old definition of applicant, for all types of applications, the OFCCP has missed an opportunity to provide clear and updated guidance for employers.

We are concerned that the regulations require federal contractors such as T-Mobile to keep "non-qualified" applications for two years. Again, by perpetuating the recordkeeping obligation for applicants who would never be interviewed, much less offered the job, the agency is unnecessarily perpetuating an unnecessary burden. Since these "non-qualified" applications will not meet the standards set by the UGESP Agencies that the application be directed to a specific job, that the individual submitting the application meet employer established criteria and that the individual follow the employer's established procedures, retaining these non-qualified "applications" will serve no purpose other than to create a significant record retention burden with no possible regulatory or affirmative action purpose. Data will be maintained for qualified applications which will enable the OFCCP to monitor affirmative action and non-discrimination requirements.

According to the proposed regulations, the OFCCP will use data from the online applicant process to determine whether federal contractors are successful in affirmative action recruiting efforts. However, having two different systems with different tracking requirements (as required by the regulations) will likely cause errors in collection of data, resulting in false reporting of affirmative action numbers. It would be unfair for the OFCCP to scrutinize these numbers for enforcement purposes until a consistent definition of applicant is arrived at.

We are also concerned that the OFCCP proposes to analyze affirmative action recruitment efforts under the same methodology as it will analyze selection percentages pursuant to the Uniform Guidelines. We are unaware of any legal authority or regulation which requires the measurement of affirmative action recruitment policies pursuant to the same strict mathematical computation required by the Guidelines to determine disparate impact. See e.g. sections 4E and 13 of the Uniform Guidelines and Q & A 29. See also Furnco Construction

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Co. v. Waters, 438 U.S. 567 (1978). We are concerned that this unnecessary intermingling of selection measuring criteria with more generalized affirmative action recruitment efforts may have the unintended consequence of lessening the creative recruitment efforts utilized by T-Mobile and we presume other contractors to bring into our workforce members of minority groups.

Finally, T-Mobile believes that the agency has underestimated the costs associated with this proposed regulation. Properly maintaining, sorting, marking and retaining records of "applicants" and those otherwise interested in the position, and the ensuing statistical analyses, procuring needed tracking software, data entry, e-mail follow-ups, vendor costs, internal review of data and adjustments to web application systems could easily annually exceed \$100 the per opening that the agency estimates. T-Mobile would spend even more as the agency adds additional racial/ethnicity categories. We believe that further investigation on the part of the agency is merited into the real burden imposed by this regulation.

We thank you in advance for your consideration, and look forward to further development of these regulations.

Respectfully submitted,

T-MOBILE USA, INC.



Randall Birkwood
Director of Talent Acquisition